

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Las Tres Marias )	
	District 14, Map 78, Control Map 78, Parcel 17P, )	
	Special Interest 000 )	Putnam County
	Commercial Personal Property )	
	Tax year 2006 )	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$176,900	\$53,070

On January 18, 2007, the taxpayer filed an appeal with the State Board of Equalization ("State Board").

The undersigned administrative judge conducted a hearing of this matter on February 27, 2007 in Cookeville. In attendance at the hearing were the appellant Eduardo Hernandez; Putnam County Assessor of Property Rhonda Chaffin; personal property specialist Sandra Freeman; and Sonya Bowling-Brown, of the State Division of Property Assessments (DPA).

Findings of Fact and Conclusions of Law

In this case, what was conceived as a more enlightened policy for the handling of non-reporting personal property accounts produced a terrible result.

Since 2004, Mr. Hernandez and his wife have operated a specialty restaurant at 2990 Old Walton Road in Monterey.<sup>1</sup> They lease this property from Wanda Hillis and Jennifer Lafever, who live in McMinnville, Tennessee.

In tax year 2005, with the assistance of Ms. Hillis, Mr. Hernandez completed and returned to the Assessor's office the tangible personal property reporting schedule required by Tenn. Code Ann. section 67-5-903.<sup>2</sup> He checked the "small accounts certification" box on the form, thus declaring that the total depreciated value of the personal property used (or held for use) in the restaurant did not exceed \$1,000.<sup>3</sup> The tax bill on the equalized assessment was just \$7.00.

Alas, in the tax year under appeal, a much different chain of events unfolded. Mr. Hernandez failed to file the tangible personal property schedule which the Assessor had

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<sup>1</sup>Mr. Hernandez subsequently changed the name of restaurant from "Mi Ranchito" to "Las Tres Marias."

<sup>2</sup>Although the 2005 schedule was filed after the March 1 statutory deadline, the Assessor accepted the reported value.

<sup>3</sup>See Tenn. Code Ann. section 67-5-903(b).

furnished to "Las Tres Marias" in January. Consequently, the Assessor was obliged by Tenn. Code Ann. section 67-5-903(c) to make a "forced assessment" on this account.

Heretofore, in this kind of situation, the Assessor had simply raised the previous year's assessment by a certain percentage. But in response to criticism of this practice, the Assessor adopted a new policy in 2006 whereby forced assessments were based on a statewide average appraisal for similar businesses which had undergone an audit. As a result, all non-reporting restaurants in her jurisdiction – including Las Tres Marias – were forced assessed at exactly the same amount: \$53,070.

In compliance with Tenn. Code Ann. section 67-5-903(c), the Assessor mailed notice of the dramatically higher assessment to the taxpayer at its Monterey address at least ten days prior to the June 1 commencement of the Putnam County Board of Equalization's annual session. Had Mr. Hernandez pursued his administrative remedy under Tenn. Code Ann. section 67-5-903(d) by appearing before the county board with a completed personal property schedule, the problem would almost certainly have been resolved. Unfortunately, he did not do so. In fact, it was not until January, 2007 – several months after the \$1,300 tax bill on the forced assessment was sent – that Ms. Hillis contacted the State Board on his behalf. According to the information attached to the appeal form (signed by Mr. Hernandez), the total cost of the furniture, fixtures, equipment, and supplies at his restaurant was barely \$8,000.

Ms. Hillis had intended to appear as a witness for the appellant; however, as she put it in an apologetic letter to the administrative judge, she "goofed...and did not get to the hearing." For his part, Mr. Hernandez testified that he did not know how to fill out the tangible personal property schedule himself. Indeed, although Ms. Hillis is not involved in the operation of the restaurant, he apparently was counting on her to handle that task. Mr. Hernandez admitted, however, that she had never promised to do so.

Among the duties of the State Board under Tenn. Code Ann. section 67-5-1501(b) are to hear and act on complaints and appeals. Tenn. Code Ann. section 67-5-1401 provides (in relevant part), however, that:

If the taxpayer fails, neglects or refuses to appear before the county board of equalization prior to its final adjournment, the assessment as determined by the assessor shall be conclusive against the taxpayer, and such taxpayer shall be required to pay the taxes on such amount....

See also Tenn. Code Ann. section 67-5-1412(b).

In 1991, however, the General Assembly enacted an amendment to Tenn. Code Ann. section 67-5-1412(e) which affords a taxpayer the opportunity for a hearing to demonstrate "reasonable cause" for failure to appeal an assessment to the local board of equalization within the allotted time (or for failure to appeal a decision of the county board of equalization before the prescribed deadline). The State Board may accept a direct appeal upon a showing of reasonable cause up to March 1 of the year following the tax year in dispute.

If ever there were a case where one might be predisposed to invoke the “reasonable cause” provision, this would surely be it. State Board Rule 0600-5-.06(5) directs that:

In making forced assessments on non-reporting accounts, the following factors **shall** be considered:

- (a) **previous data on file for that account;**
- (b) data from **comparable** accounts;
- (c) **data collected during any field visits.**

[Emphasis added.]

No representative of the Putnam County Assessor’s office ever officially visited the site of the subject property. Given the limited period of time within which an assessor must process a multitude of tangible personal property schedules and assess non-reporting as well as reporting accounts, that is probably understandable. Yet the “previous data on file” for this account reflected that it was a small business with minimal assets. Of course, as Ms. Freeman pointed out, the appellant could have underreported in 2005. But that possibility always arises with respect to *any* personal property tax return. In the opinion of the administrative judge, the application of a “one-size-fits-all” policy for forced assessments on restaurants – or any other type of business, for that matter – does not comport with the terms of the quoted rule.

That said, the administrative judge perceives no ground for a finding of reasonable cause in this instance. The issue, it should be emphasized, is not whether Mr. Hernandez justifiably relied on someone else to complete and return the required personal property schedule. Rather, the question is whether an “illness or other circumstance beyond the taxpayer’s control” prevented him (or an authorized agent) from appealing the forced assessment to the county board of equalization. See Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), pp. 2—3. Nothing in the record suggests the existence of any such extenuating circumstance. To the contrary, it appears that the appellant bears sole responsibility for failing or neglecting to make complaint to the county board.

The Tennessee Attorney General has opined that “[t]he requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization...is a jurisdictional prerequisite....” Tenn. Atty. Gen. Op. 92-62, p. 10.

#### Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of

the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28<sup>th</sup> day of March, 2007.



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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Eduardo Hernandez, Las Tres Marias  
Rhonda Chaffin, Putnam County Assessor of Property

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